

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-218694

**DATE:** November 25, 1985

**MATTER OF:** ABF Freight System, Inc.

**DIGEST:** For the transportation of a Government shipment to Tobyhanna Army Depot, Pennsylvania, a motor common carrier collected charges based on tariff rates. The General Services Administration (GSA) determined that lower tender rates offered solely to the Government under section 22 of the Interstate Commerce Act, 49 U.S.C. § 10721, were applicable, and collected the overcharges by deduction. The GSA action was improper. Although the carrier had nationwide operating authority to transport Government traffic between all points in the United States, the statutory authority to offer the Government lower rates is voluntary. The carrier's tender refers to a certificate of public convenience and necessity and a points-of-service tariff that exclude Tobyhanna as a direct service point; thus, the rates in the tender are not applicable to traffic transported to that point.

The General Services Administration made an audit determination that ABF Freight System, Inc. (ABF), collected overcharges for transporting a Government shipment in 1982, and had the excess deducted from monies otherwise due the carrier. ABF asks for review of that action. We conclude that the General Services Administration's action was improper because the rate tender upon which it was based did not apply to the destination point of the shipment.

**Facts**

ABF transported a shipment of radio transmitting and receiving sets, weighing 1,064 pounds, in single-line service from Sacramento Army Depot, California, to Tobyhanna Army Depot, Pennsylvania, on Government Bill of Lading No. S-3989947, dated August 6, 1982. The carrier billed and was paid \$314.94 on the less truckload commodity rate published in Rocky Mountain Motor Tariff Bureau Tariff No. ICC RMB 226-B. As a result of its audit determination,

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that lower rates published in the carrier's tender<sup>1/</sup> were applicable, the General Services Administration had \$116.93 deducted. The carrier contends that it is entitled to a refund.<sup>2/</sup>

The tender, ABF's ICC 1174-A, issued April 19, 1982, offers rates for the transportation of "Freight All Kinds" (with exceptions not here relevant) from California to points served directly by the carrier in 32 states and the District of Columbia. ABF does not dispute that radio sets, the commodity transported, are covered under "Freight All Kinds." The carrier contends, however, that the tender does not apply to the specific destination point of the shipment, Tobyhanna, Pennsylvania. ABF refers to item 11 of the tender which provides that the tender's rates apply to shipments destined only to direct service points, as defined in section 2 of tariff RMB 118.<sup>3/</sup> ABF is not

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<sup>1/</sup> Tenders are rate quotations offered to the Government under section 22 of the Interstate Commerce Act (49 U.S.C. § 10721) which authorizes common carriers to deviate from legally published tariff rates that are applicable to the public generally.

<sup>2/</sup> In its letter asking for review, ABF contended that it voluntarily paid \$117.04 in 1983, in response to the Army's overcharge claim on the same bill. ABF asked for refund of \$233.97, which includes the amount of \$116.93 deducted by the General Services Administration. The General Services Administration reported that the Army refunded \$116.93 in May, based on their Certificate of Settlement, dated March 26, 1985. The amount remaining in controversy appears to be \$117.04.

<sup>3/</sup> Tariff RMB 118, referred to as a "Points of Service Tariff," is published by the Rocky Mountain Motor Tariff Bureau. Item 860 of RMB 118, captioned "Restricted Authority," refers to the Bureau's "Participating Carrier Tariff," ICC RMB 170, which shows that ABF (among other carriers) participates in 25 tariffs published by the Bureau, including 118 and 226, the tariff containing the rates applied by the carrier to this shipment.

included in the list of carriers shown in tariff RMB 118 as serving Tobyhanna.

The General Services Administration acknowledges that ABF's operating authority, certificate of public convenience and necessity MC-29910, which is specified in item 18 of the tender does not authorize direct service to Tobyhanna. The foundation for the General Services Administration's audit determination is the fact that the Interstate Commerce Commission notified ABF's agent by letter of June 5, 1980, that the carrier could provide nationwide service on Government traffic pursuant to a master certificate issued in Ex Parte No. MC-107, Transportation of Government Traffic, 131 M.C.C. 845 (1979).<sup>4/</sup>

The General Services Administration contends that since ABF had authority under the master certificate, resulting from Ex Parte MC-107, to transport Government traffic to all points in the United States, without restriction, the restriction in MC-29910 was irrelevant; therefore, the lower rates offered in tender 1174-A applied to shipments destined to Tobyhanna.

#### Discussion

We do not perceive the issue here to be whether the carrier has authority to serve Tobyhanna. We assume that under Ex Parte MC-107 ABF had authority to serve Tobyhanna for Government traffic when this shipment moved in 1982. The issue is whether ABF offered the lower rates in tender 1174-A on shipments destined to Tobyhanna. In light

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<sup>4/</sup> As a result of Ex Parte MC-107, a rule-making proceeding intended to remedy difficulty in obtaining contracts to transport Government traffic, the Commission found a requirement for the nationwide operation of qualified carriers over irregular routes to transport general commodities (with the usual exceptions), restricted to transportation of United States Government traffic. Unlike the formal proceedings in which ABF apparently was required to establish the public need for the service authorized in MC-29910, ABF acquired the nationwide authority, apparently, by filing a request, and the absence of opposition.

of the governing principles of law, we resolve this issue by reference to the tender, the tariffs incorporated therein, and the facts incident to the actual transportation.

Generally, common carriers are required to provide reasonable service to the public to all points authorized by their operating certificates. Here, the carrier provided direct service to Tobyhanna, by making delivery itself, and ABF applied rates, as it was required to do by law (in the absence of statutory exception), from a lawfully filed tariff. Section 22 of the Interstate Commerce Act, 49 U.S.C. § 10721, however, constitutes a statutory exception to the nondiscriminatory application of tariff rates. Section 10721(b)(1) provides:

"\* \* \* A common carrier providing transportation or service subject to the jurisdiction of the Commission under chapter 105 of this title \* \* \* may transport property for the United States Government, a State, or municipal government without charge or at reduced rates \* \* \*."

The material point is that the offer of free or reduced-rate transportation is voluntary. See Lockheed Propulsion Company; Thiokol Corporation, 53 Comp. Gen. 977, 1009 (1974), 74-1 C.P.D. ¶ 339.

The Claims Court has held that tenders, as rate quotations, are continuing unilateral offers to perform transportation services at normal ratings and rates subject to the terms and conditions named therein. See C. & H. Transportation Company v. United States, 436 F.2d 480, 481 (1971). ABF's ICC 1174-A was prepared on Optional Form 280, "Uniform Tender of Rates and/or Charges for Transportation Services."

Item 21 provides:

**"CARRIER(S) OFFER AND INSTRUCTIONS**

"I am (we are) authorized to and offer on a continuing basis to the United States Government (subsequently called the Government), based on Section 10721 of the Interstate Commerce Act or other appropriate

authority, the transportation services described in this tender, subject to the terms and conditions stated in this tender. \* \* \*

Item 20, captioned "General Terms and Conditions," provides, in subitem 20A:

**"a. Lawful Performance: Operating Authorities**

"The carrier(s) represent(s) to the United States that the services provided in this tender will be performed in accordance with applicable Federal, state and municipal laws and regulations and the carrier(s) hold(s) the required operating authority to transport the commodity from, to, or between the places specified in the authorized certificates, permits or temporary operating authorities."

Item 18, captioned "Operating Authority (note item 20A)" provides: "ABF Freight System, Inc. - MC-29910."

As previously stated, item 11B, containing the destination points, expressly conditioned the offer to direct service points in the listed states (including Pennsylvania) "as defined in section 2 of RMB 118 Series," and section 2 of RMB 118 reflected the restriction contained in MC-29910, from serving Tobyhanna, Pennsylvania, directly.

We note that the carrier amended the tender on three occasions between the date of original issuance and the date when this shipment was transported, but none of the supplements contained a change in the operating authority specified in item 18 (MC-29910), and no change was made in item 11B, referring to section 2 of RMB 118. As indicated above, ABF was not one of the carriers shown in section 2 of RMB 118 as serving Tobyhanna at the time this shipment was tendered. Thus, while the carrier had the authority under Ex Parte MC-107 to serve Tobyhanna directly for Government traffic, under the specific terms of tender 1174-A it did not offer the lower rates provided by that tender

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for shipments to Tobyhanna. Accordingly, the offer of lower rates on Government traffic under tender 1174-A did not extend to the shipment in controversy.

The General Services Administration should issue settlement consistent with this decision.

*for Milton J. Fowler*  
Comptroller General  
of the United States